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October 29, 2007

VIA FEDERAL EXPRESS

#7908-6197-9970

Elizabeth O'Donnell
Executive Director
Kentucky Public Service Commission
211 Sower Boulevard
Frankfort, KY 40601

RECEIVED

OCT 30 2007

PUBLIC SERVICE
COMMISSION

RE: Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company Demand-Side Management for the Review, Modification, and Continuation of Energy Efficiency Programs and DSM Cost Recovery Mechanisms
KPSC Case No. 2007-00319

Dear Ms. O'Donnell:

Enclosed please find and accept for filing the original and ten copies of Louisville Gas and Electric Company's and Kentucky Utilities Company's Joint Response to CAC's Objection to Companies' Motion to Modify Procedural Schedule in the above-referenced matter. Please confirm your receipt of this filing by placing the stamp of your Office with the date received on the enclosed additional copies and return them to me in the enclosed self-addressed stamped envelope.

Should you have any questions please contact me at your convenience.

Sincerely,

W. Duncan Crosby III

WDC:ec
Enclosures as mentioned
cc: Parties of Record

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COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE JOINT APPLICATION OF LOUISVILLE)
GAS AND ELECTRIC COMPANY AND)
KENTUCKY UTILITIES COMPANY DEMAND-)
SIDE MANAGEMENT FOR THE REVIEW,) CASE NO. 2007-00319
MODIFICATION, AND CONTINUATION OF)
ENERGY EFFICIENCY PROGRAMS AND DSM)
COST RECOVERY MECHANISMS)

**JOINT RESPONSE OF LOUISVILLE GAS AND ELECTRIC COMPANY AND
KENTUCKY UTILITIES COMPANY TO CAC’S OBJECTION TO COMPANIES’
MOTION TO MODIFY PROCEDURAL SCHEDULE**

Louisville Gas and Electric Company and Kentucky Utilities Company (collectively “Companies”), by counsel, hereby respond to the October 26, 2007 Objection of the Community Action Counsel of Lexington-Fayette, Bourbon, Harrison and Nicholas Counties, Inc. (“CAC”). For its Response, the Companies state:

On October 17, 2007, the Companies moved the Commission to modify the procedural schedule in this proceeding to allow the Companies to file responsive comments one week following the submission of interveners’ comments.¹ It was not until over a week later, on October 26, 2007 – the deadline for filing comments – that CAC filed its objection to the Companies’ Motion. In its Objection, CAC made two related assertions: (1) “there is nothing to prevent the companies from filing comments [on October 26]”;² and (2) two rounds of data

¹ *In the Matter of the Joint Application of Louisville Gas and Electric Company and Kentucky Utilities Company Demand-Side Management for the Review, Modification, and Continuation of Energy Efficiency Programs and DSM Cost Recovery Mechanisms*, Case No. 2007-00319 (“DSM Proceeding”), Motion of Louisville Gas and Electric Company and Kentucky Utilities Company for Leave to File Responsive Comments and to Modify Procedural Schedule (Oct. 17, 2007).

² DSM Proceeding, CAC’s Objection to Motion of Louisville Gas and Electric Company and Kentucky Utilities Company for Leave to Modify Procedural Schedule at 1 (Oct. 26, 2007).

requests and the Companies' responses thereto made sufficiently clear the various parties' positions, therefore there was no need for the Companies to see the interveners' comments before responding to them.³ Regarding CAC's first assertion, the Companies have moved the Commission for leave to file responsive comments because they believe that presenting comments to the Commission that take into account the interveners' concerns and suggestions as expressed in their comments would be more useful than simply reiterating what the Companies have already stated in their Application and supporting testimony. Thus, though the Companies could have submitted comments on October 26, they would not have addressed all the concerns and suggestions of the interveners.

With respect to the CAC's second assertion, the Companies strongly disagree that they can reliably know other parties' positions by inferring them from the other parties' data requests.⁴ There is a possibility of mischaracterization or misunderstanding inherent in using deductive reasoning or inference to impute a position to a party, which is why the Companies will and do take the CAC's and other interveners' filed comments to be their respective positions on the issues addressed therein. And it is because the Companies cannot know the interveners' positions until the interveners make them explicit through filed comments that the Companies requested leave to file responsive comments.

The Companies believe the importance of filing responsive comments in this proceeding derives from (1) achieving the efficiency of fleshing out the true issues in the proceeding and (2) basic due process rights. The Companies, as the applicants in this proceeding, bear the burden of showing the prudence of their proposed Demand-Side Management projects. It is a venerable

³ *Id.* at 2.

⁴ As a matter of logic, if a party's complete set of positions could be known reliably from the party's data requests, it would serve no purpose to allow the party to file comments – and surely CAC does not mean to imply that the Commission should disregard its comments.

tenet of due process that the party bearing the burden of proof in a proceeding is entitled to respond to arguments and evidence brought against it. Therefore, the Companies believe that granting them leave to file responsive comments would accord with their due process rights in this proceeding.

Finally, the Companies note that the CAC itself has already delayed this proceeding, having filed data requests on October 2, 2007,⁵ notwithstanding that the procedural schedule then in effect required data requests to be filed no later than September 21 -- more than a week earlier.⁶ The only reason the CAC could muster to defend its delay was “excusable neglect” due to a “breakdown in communications among staff and outside counsel.”⁷ The Commission did not consider the claimed “breakdown” to be excusable neglect,⁸ but ultimately did extend the deadline for filing comments to October 26 in response to the CAC’s delay and the AG’s request to extend the deadline due to the complexity of the issues presented in this proceeding.⁹ The Companies respectfully submit that if inexcusable neglect and complexity of the issues presented were sufficient reasons for extending the comment filing deadline, then increased procedural efficiency and the Companies’ due process right to respond to evidence and claims, if any, presented in derogation of the Companies’ proposed Demand-Side Management projects, are sufficient reasons to grant the Companies’ motion for leave to file responsive comments by November 2, 2007.

WHEREFORE Louisville Gas and Electric Company and Kentucky Utilities Company respectfully request the Commission to overrule CAC’s Objection and to grant the Companies’ October 17, 2007 Motion for Leave to File Responsive Comments and to Modify Procedural

⁵ DSM Proceeding, CAC’s Supplemental Interrogatories to LG&E and KU (Oct. 2, 2007).

⁶ DSM Proceeding, Order at Appx. A (Aug. 24, 2007).

⁷ DSM Proceeding, Motion to Late File Supplemental Interrogatories at 1 (Oct. 2, 2007).

⁸ DSM Proceeding, Order at 2 (October 12, 2007).

⁹ *Id.* at 3.

Schedule, which would allow the Companies to file responsive comments in this proceeding by November 2, 2007.

Dated: October 29, 2007

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Joint Response was sent to the following attorneys of record by U.S. mail, postage prepaid, on this 29th day of October, 2007.

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